

AMENDED IN ASSEMBLY APRIL 3, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1337**

**Introduced by Assembly Member Daucher**

February 21, 2003

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An act to amend ~~Sections 56366.1 and 56505.2 of Section 56505.2~~ of, and to add *Section 56366.10* to, the Education Code, relating to special education.

LEGISLATIVE COUNSEL'S DIGEST

AB 1337, as amended, Daucher. Special education.

(1) Existing law sets forth a method for providing special education and related services to pupils with exceptional needs. Existing law also permits, under certain circumstances, contracts to be entered for the provision of those services by nonpublic, nonsectarian schools or agencies, as defined. Existing law authorizes a master contract for special education and related services provided by a nonpublic, nonsectarian school or agency only if the school or agency has been certified as meeting specified standards. Existing law sets forth the certification process and procedures for the nonpublic, nonsectarian schools or agencies that seek certification.

This bill would ~~also authorize a school district, county office of education, or special education local plan area to seek certification. The bill, in addition, would make related changes~~ *provide that, notwithstanding any other provision of law, a school district, county office of education, or special education local plan area is deemed to have standards for the provision of special education and related*

*services that are greater than or equal to the standards applicable to a certified nonpublic, nonsectarian school or agency.*

(2) Existing law provides that a hearing officer may not render a decision that results in the placement of an individual with exceptional needs in a nonpublic, nonsectarian school, or in a service for an individual with exceptional needs provided by a nonpublic agency, if the school or agency has not been certified. Existing law requires a hearing officer to consider certain provisions of law relating to nonpublic, nonsectarian schools and agencies, including those relating to certification, during a due process hearing concerning an issue of placement of an individual with exceptional needs in a nonpublic, nonsectarian school or of service for an individual with exceptional needs provided by a nonpublic agency.

This bill would prohibit a hearing officer from rendering a decision that results in the placement of an individual with exceptional needs in a nonpublic, nonsectarian school, or in a service for an individual with exceptional needs provided by a nonpublic agency, if the school district, county office of education, or special education local plan area operates a *special education* program ~~that has been certified~~, unless the party seeking placement or service from a nonpublic, nonsectarian school or agency proves, by a preponderance of the evidence, that *an appropriate public special education program or service is not available and the program operated by the school district, county office of education, or special education local plan area is not able to provide a free appropriate public education to the individual.*

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1    ~~SECTION 1. Section 56366.1 of the Education Code is~~  
 2    *SECTION 1. Section 56366.10 is added to the Education*  
 3    *Code, to read:*  
 4    *56366.10. Notwithstanding any other provision of law, a*  
 5    *district, county office, or special education local plan area*  
 6    *operating under an approved local plan is deemed to have*  
 7    *standards for the provision of special education and related*  
 8    *services that are greater than or equal to the standards applicable*  
 9    *to a nonpublic, nonsectarian school or agency that is certified in*  
 10    *accordance with this article.*

1 amended to read:

2 56366.1. ~~(a) A nonpublic, nonsectarian school or agency or~~  
3 ~~a school district, county office of education, or special education~~  
4 ~~local plan area that seeks certification shall file an application with~~  
5 ~~the superintendent on forms provided by the department and~~  
6 ~~include the following information on the application:~~

7 ~~(1) A description of the special education and designated~~  
8 ~~instruction and services provided to individuals with exceptional~~  
9 ~~needs if the application is for nonpublic, nonsectarian school~~  
10 ~~certification or program certification of a school district, county~~  
11 ~~office of education, or special education local plan area.~~

12 ~~(2) A description of the designated instruction and services~~  
13 ~~provided to individuals with exceptional needs if the application~~  
14 ~~is for nonpublic, nonsectarian agency certification.~~

15 ~~(3) A list of appropriately qualified staff, a description of the~~  
16 ~~credential, license, or registration that qualifies each staff member~~  
17 ~~to render special education or designated instruction and services,~~  
18 ~~and copies of their credentials, licenses, or certificates of~~  
19 ~~registration with the appropriate state or national organization that~~  
20 ~~has established standards for the service rendered.~~

21 ~~(4) An annual operating budget.~~

22 ~~(5) Affidavits and assurances necessary to comply with all~~  
23 ~~applicable federal, state, and local laws and regulations which~~  
24 ~~include criminal record summaries required of all nonpublic~~  
25 ~~school or agency personnel having contact with minor children~~  
26 ~~under Section 44237.~~

27 ~~(b) If the applicant operates a facility or program on more than~~  
28 ~~one site, each site shall be certified.~~

29 ~~(c) If the applicant is part of a larger program or facility on the~~  
30 ~~same site, the superintendent shall consider the effect of the total~~  
31 ~~program on the applicant. A copy of the policies and standards for~~  
32 ~~the nonpublic, nonsectarian school or agency or for the school~~  
33 ~~district, county office of education, or special education local plan~~  
34 ~~area and the larger program shall be available to the~~  
35 ~~superintendent.~~

36 ~~(d) Prior to certification, the superintendent shall conduct an~~  
37 ~~onsite review of the facility and program for which the applicant~~  
38 ~~seeks certification. The superintendent may be assisted by~~  
39 ~~representatives of the special education local plan area in which the~~  
40 ~~applicant is located and a nonpublic, nonsectarian school or~~

1 agency representative who does not have a conflict of interest with  
2 the applicant. The superintendent shall conduct an additional  
3 onsite review of the facility and program within four years of the  
4 effective date of the certification, unless the superintendent  
5 conditionally certifies the nonpublic, nonsectarian school or  
6 agency or the school district, county office of education, or special  
7 education local plan area, or unless the superintendent receives a  
8 formal complaint against the nonpublic, nonsectarian school or  
9 agency or the school district, county office of education, or special  
10 education local plan area. In the latter two cases, the  
11 superintendent shall conduct an onsite review at least annually.

12 (e) The superintendent shall make a determination on an  
13 application within 120 days of receipt of the application and shall  
14 certify, conditionally certify, or deny certification to the applicant.  
15 If the superintendent fails to take one of these actions within 120  
16 days, the applicant is automatically granted conditional  
17 certification for a period terminating on August 31, of the current  
18 school year. If certification is denied, the superintendent shall  
19 provide reasons for the denial. The superintendent may certify the  
20 nonpublic, nonsectarian school or agency or the school district,  
21 county office of education, or special education local plan area for  
22 a period of not longer than four years.

23 (f) Certification becomes effective on the date the nonpublic,  
24 nonsectarian school or agency or the school district, county office  
25 of education, or special education local plan area meets all the  
26 application requirements and is approved by the superintendent.  
27 Certification may be retroactive if the nonpublic, nonsectarian  
28 school or agency or the school district, county office of education,  
29 or special education local plan area met all the requirements of this  
30 section on the date the retroactive certification is effective.  
31 Certification expires on December 31 of the terminating year.

32 (g) The superintendent shall annually review the certification  
33 of each nonpublic, nonsectarian school and agency and of each  
34 school district, county office of education, or special education  
35 local plan area. For this purpose, a certified nonpublic,  
36 nonsectarian school or agency or certified school district, county  
37 office of education, or special education local plan area shall  
38 annually update its application between August 1 and October 31,  
39 unless the board grants a waiver pursuant to Section 56101. The

1 ~~superintendent may conduct an onsite review as part of the annual~~  
2 ~~review.~~

3 ~~(h) The superintendent may monitor a nonpublic, nonsectarian~~  
4 ~~school or agency or a school district, county office of education,~~  
5 ~~or special education local plan area onsite at any time without prior~~  
6 ~~notice when there is substantial reason to believe that there is an~~  
7 ~~immediate danger to the health, safety, or welfare of a child. The~~  
8 ~~superintendent shall document the concern and submit it to the~~  
9 ~~nonpublic, nonsectarian school or agency or the school district,~~  
10 ~~county office of education, or special education local plan area at~~  
11 ~~the time of the onsite monitoring. The superintendent shall require~~  
12 ~~a written response to any noncompliance or deficiency found.~~

13 ~~(i) (1) Notwithstanding any other law, the superintendent may~~  
14 ~~not certify a nonpublic, nonsectarian school or agency that~~  
15 ~~proposes to initiate or expand services to pupils currently educated~~  
16 ~~in the immediate prior fiscal year in a juvenile court program,~~  
17 ~~community school pursuant to Section 56150, or other nonspecial~~  
18 ~~education program, including independent study or adult school,~~  
19 ~~or both, unless the nonpublic, nonsectarian school or agency~~  
20 ~~notifies the county superintendent of schools and the special~~  
21 ~~education local plan area in which the proposed new or expanded~~  
22 ~~nonpublic, nonsectarian school or agency is located of its intent to~~  
23 ~~seek certification.~~

24 ~~(2) The notification shall occur no later than the December 1~~  
25 ~~prior to the new fiscal year in which the proposed or expanding~~  
26 ~~school or agency intends to initiate services. The notice shall~~  
27 ~~include the following:~~

28 ~~(A) The specific date upon which the proposed nonpublic,~~  
29 ~~nonsectarian school or agency is to be established.~~

30 ~~(B) The location of the proposed program or facility.~~

31 ~~(C) The number of pupils proposed for services, the number of~~  
32 ~~pupils currently served in the juvenile court, community school,~~  
33 ~~or other nonspecial education program, the current school services~~  
34 ~~including special education and related services provided for these~~  
35 ~~pupils, and the specific program of special education and related~~  
36 ~~services to be provided under the proposed program.~~

37 ~~(D) The reason for the proposed change in services.~~

38 ~~(E) The number of staff that will provide special education and~~  
39 ~~designated instruction and services and hold a current valid~~

~~California credential or license in the service rendered or certificate of registration to provide occupational therapy.~~

~~(3) In addition to the requirements in subdivisions (a) to (e), inclusive, the superintendent shall require and consider the following in determining whether to certify a nonpublic, nonsectarian school or agency as described in this subdivision:~~

~~(A) A complete statement of the information required as part of the notice under paragraph (1).~~

~~(B) Documentation of the steps taken in preparation for the conversion to a nonpublic, nonsectarian school or agency, including information related to changes in the population to be served and the services to be provided pursuant to each pupil's individualized education program.~~

~~(4) Notwithstanding any other provision of law, the certification becomes effective no earlier than July 1, if the school or agency provided the notification required pursuant to paragraph (1).~~

~~(j) The nonpublic, nonsectarian school or agency shall be charged a reasonable fee for certification. The superintendent may adjust the fee annually commensurate with the statewide average percentage inflation adjustment computed for revenue limits of unified school districts with greater than 1,500 units of average daily attendance if the percentage increase is reflected in the district revenue limit for inflation purposes. For purposes of this section, the base fee shall be the following:~~

<del>_____ (1) 1–5 pupils .....</del>	<del>\$—150</del>
<del>_____ (2) 6–10 pupils .....</del>	<del>—250</del>
<del>_____ (3) 11–24 pupils .....</del>	<del>—500</del>
<del>_____ (4) 25–75 pupils .....</del>	<del>—750</del>
<del>_____ (5) 76 pupils and over .....</del>	<del>—1,000</del>

~~The school or agency shall pay this fee when it applies for certification and when it updates its application for annual review by the superintendent. The superintendent shall use these fees to conduct onsite reviews, which may include field experts. No fee shall be refunded if the application is withdrawn or is denied by the superintendent.~~

~~(k) (1) Notwithstanding any other provision of law, only those nonpublic, nonsectarian schools and agencies and school districts,~~

1 county offices of education, and special education local plan areas  
2 that provide special education and designated instruction and  
3 services utilizing staff who hold, or are receiving training under  
4 the supervision of staff who hold, a current valid California  
5 credential or license in the service rendered shall be eligible to  
6 receive certification. Only those nonpublic, nonsectarian schools  
7 or agencies located outside of California that employ staff who  
8 hold a current valid credential or license to render special  
9 education and related services as required by that state shall be  
10 eligible to be certified.

11 (2) Nothing in this subdivision restricts student teachers,  
12 interns, or other staff who are enrolled in training programs that  
13 lead to a license or credential that authorize the holder to render  
14 services to special education pupils and who are under the direct  
15 supervision of a staff member who holds a current valid California  
16 credential, license, or certificate of registration document.

17 (3) A nonpublic, nonsectarian school or agency or a school  
18 district, county office of education, or special education local plan  
19 area that employs only persons who hold a valid California  
20 credential authorizing substitute teaching pursuant to Section  
21 56060 shall not be certified. At least one full-time person with a  
22 current valid California credential, license, or certificate of  
23 registration in the area of service to be rendered, or a current valid  
24 credential, license, or certificate of registration for appropriate  
25 special education and related services rendered that is required in  
26 another state, shall be required for purposes of certification under  
27 subdivision (d) of Section 56366.

28 (4) A nonpublic, nonsectarian school or agency or a school  
29 district, county office of education, or special education local plan  
30 area that employs persons holding a valid emergency credential  
31 shall document efforts of recruiting appropriately credentialed,  
32 licensed, or registered personnel for the special education and  
33 related services rendered as a condition of renewing certification.

34 (5) The State Board of Education shall issue regulations to  
35 implement this subdivision. The regulations shall be developed by  
36 the Superintendent of Public Instruction, in collaboration with the  
37 Commission on Teacher Credentialing and other public agencies  
38 responsible for issuing licenses or certificates of registration to  
39 individuals providing designated instruction and services to  
40 individuals with exceptional needs. The regulations also shall be



1 ~~developed in consultation with statewide organizations~~  
2 ~~representing public and nonpublic, nonsectarian schools or~~  
3 ~~agencies that provide special education and designated instruction~~  
4 ~~and services. The regulations shall include, but shall not be~~  
5 ~~necessarily limited to, all of the following:~~

6 ~~(A) Requirements for minimum personnel qualifications for~~  
7 ~~credentials to provide special education to individuals with~~  
8 ~~exceptional needs issued by the Commission on Teacher~~  
9 ~~Credentialing pursuant to this code and applicable federal laws.~~

10 ~~(B) Requirements for minimum personnel qualifications for~~  
11 ~~licenses or certifications of registration to provide designated~~  
12 ~~instruction and services to individuals with exceptional needs~~  
13 ~~issued by the California Board of Medical Quality Assurance, the~~  
14 ~~Board of Behavioral Science Examiners, the Board of Consumer~~  
15 ~~Affairs, and other state licensure agencies that are authorized~~  
16 ~~under the Business and Professions Code to grant licenses or~~  
17 ~~certificates of registration that may be applicable to the provision~~  
18 ~~of designated instruction and services to individuals with~~  
19 ~~exceptional needs.~~

20 ~~(C) Requirements for personnel who are not licensed or~~  
21 ~~credentialed to provide special education or designated instruction~~  
22 ~~and services to pupils under the supervision of a credentialed or~~  
23 ~~licensed professional in the service rendered, including direct and~~  
24 ~~nondirect supervision requirements established by this code and~~  
25 ~~the Business and Professions Code, and related regulations.~~

26 ~~(D) Requirements for the certification of nonpublic,~~  
27 ~~nonsectarian schools and agencies and school districts, county~~  
28 ~~offices of education, and special education local plan areas that~~  
29 ~~provide individual and group designated instruction and services~~  
30 ~~to individuals with exceptional needs.~~

31 ~~(l) The superintendent shall establish guidelines for the~~  
32 ~~implementation of subdivision (a) in consultation with statewide~~  
33 ~~organizations representing providers of special education and~~  
34 ~~designated instruction and services. The State Board of Education~~  
35 ~~shall approve the standards.~~

36 ~~(m) (1) The superintendent shall, in consultation with~~  
37 ~~statewide organizations representing providers of special~~  
38 ~~education and designated instruction and services, develop the~~  
39 ~~procedures, methods, and areas of certification, including, but not~~  
40 ~~limited to, the following:~~



1 ~~(A) Information required for purposes of the application~~  
2 ~~specified in subdivision (a).~~

3 ~~(B) Procedures for conducting onsite reviews of the nonpublic,~~  
4 ~~nonsectarian school or agency program or the program of the~~  
5 ~~school district, county office of education, or special education~~  
6 ~~local plan area.~~

7 ~~(C) Provisions specific to minimum staff qualifications to~~  
8 ~~provide special education and designated instruction and services~~  
9 ~~that are required for certification.~~

10 ~~(D) Provisions specific to the provision of special education~~  
11 ~~and related services to individuals with exceptional needs from~~  
12 ~~birth to preschool.~~

13 ~~(2) The board shall issue as rules and regulations the~~  
14 ~~procedures, methods, and areas of certification developed~~  
15 ~~pursuant to paragraph (1).~~

16 ~~(n) In addition to meeting the standards adopted by the board,~~  
17 ~~a nonpublic, nonsectarian school or agency shall provide written~~  
18 ~~assurances that it meets all applicable standards relating to fire,~~  
19 ~~health, sanitation, and building safety.~~

20 SEC. 2. Section 56505.2 of the Education Code is amended  
21 to read:

22 56505.2. (a) A hearing officer may not render a decision that  
23 results in the placement of an individual with exceptional needs in  
24 a nonpublic, *nonsectarian* school, or that results in a service for an  
25 individual with exceptional needs provided by a nonpublic,  
26 *nonsectarian* agency, if the school or agency has not been certified  
27 pursuant to Section 56366.1.

28 (b) A hearing officer shall consider Sections 56365, 56365.5,  
29 56366, and 56366.1 during a due process hearing concerning an  
30 issue of placement of an individual with exceptional needs in a  
31 nonpublic, nonsectarian school, or services for an individual with  
32 exceptional needs provided by a nonpublic, nonsectarian agency.

33 (c) A hearing officer may not render a decision that results in  
34 the placement of an individual with exceptional needs in a  
35 nonpublic, nonsectarian school, or that results in a service being  
36 provided to an individual with exceptional needs by a nonpublic  
37 agency, if the school district, county office of education, or special  
38 education local plan area operates a ~~program that has been certified~~  
39 ~~pursuant to Section 56366.1, special education program,~~ unless  
40 the party seeking placement or ~~services~~ service from a nonpublic,

1 *nonsectarian* school or a nonpublic, *nonsectarian* agency proves,  
2 by a preponderance of the evidence, that *an appropriate public*  
3 *special education program or service is not available and* the  
4 program operated by the school district, county office of  
5 education, or special education local plan area is not able to  
6 provide a free appropriate public education to the individual with  
7 exceptional needs.

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9 CORRECTIONS

10 Text — Pages 8 and 9.

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